

1 Marc J. Randazza, Esq.,  
2 Arizona Bar No. 027861  
Randazza Legal Group  
3 3969 Fourth Avenue, Suite 204  
San Diego, CA 92103  
888-667-1113  
4 305-437-7662 (fax)  
[MJR@randazza.com](mailto:MJR@randazza.com)

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6 Attorney for Plaintiff,  
LIBERTY MEDIA HOLDINGS, LLC

7

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF ARIZONA

10 Liberty Media Holdings, LLC ) Case No. 11-CV-0280-PHX-LOA  
11 Plaintiff, ) **PLAINTIFF'S RESPONSE TO ORDER TO**  
12 vs. ) **SHOW CAUSE (ECF NO. 18)**  
13 )  
14 Vinigay.com; Gustavo Paladeski; Vinicius )  
Alves )  
15 Defendants. )  
16 )  
17 )

18 1. On April 11, 2011, the court requested a status report as to why the action should not be  
dismissed for want of prosecution. (ECF 18).

19 2. Defendants Vinigay.com and Gustavo Paladeski were required to respond or otherwise  
defend on or before March 31, 2011. Defendant Vinicius Alves was required to respond or  
otherwise defend on or before April 1, 2011.

20 3. It has now been only 10 days since the last deadline for Defendants to respond.

21 4. As a matter of pattern and practice, the undersigned prefers to allow some leeway to  
defendants, and does not normally move for entry of default against a defendant immediately  
upon the deadline for their answer (nor without notice to a defendant). Courts may, upon good  
cause, set aside an entry of default pursuant to Fed. R. Civ. P. 55(c) if defendant's answer arrives  
late, and both courtesy and judicial economy weigh in favor of providing a seemingly defaulting  
defendant with some degree of leeway.

1       5.     Given that the Defendants are located in Brazil, a two week wait was appropriately  
 2 courteous in the undersigned's view.

3       6.     As the Court issued the OSC before the finish of this 2 week period, the undersigned did  
 4 not yet have a chance to notify the Defendant of Plaintiff's intent to seek default, which the  
 5 undersigned prefers to do before moving for default.

6       7.     Given the Court's OSC, Plaintiff is contemporaneously filing its motion for entry of  
 7 default along with this response.

8       8.     It is not in the interest of justice to dismiss the action, as allowing a Defendant some  
 9 leeway before immediately seeking a default is in the interest of justice and professionalism.  
 10 See, e.g., *Lack v. Rustick*, 2008 U.S. Dist. LEXIS 9969 \*4 (D. Ariz. 2008) ("Default judgment is  
 11 generally disfavored, and a court should, whenever possible, decide a case on the merits.");  
 12 *Smith v. Robinson*, 2009 U.S. Dist LEXIS 91965, \*6 (M.D. Fla. 2009 ) ("Pursuant to Rule 55...a  
 13 court may set aside an entry of default 'for good cause.' 'Good cause' is a liberal, elastic  
 14 standard that does not have a precise formula."); *Active Prods. Corp. v. A.H. Choitz & Co.*, 163  
 15 F.R.D. 274, 1995 U.S. Dist. LEXIS 22061, \*33 (N.D. Ind. 1995) ("Whenever it appears that a  
 16 party is in default by failure to appear or to plead or defend as required by the Federal Rules or  
 17 an Order of this Court, plaintiffs shall, within thirty (30) days of that default, move for a default  
 18 in accordance with Rule 55 of the Federal Rules of Civil Procedure.")

19              Dated: April 12, 2011

20              s/ Marc Randazza

21              Marc Randazza, Arizona Bar No. 027861  
 22              Randazza Legal Group  
 23              3969 Fourth Avenue, Suite 204  
 24              San Diego, CA 92103  
 25              888-667-1113  
 26              305-437-7662 (fax)  
 27              [MJR@randazza.com](mailto:MJR@randazza.com)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed using this Court's CM/ECF system on April 12, 2011. Service was made on Defendants by email pursuant to the Court's Order (ECF No. 10).

5 | Dated: April 12, 2011

Respectfully submitted,

s/ Marc Randazza

Marc J. Randazza, SBN 269535  
Randazza Legal Group  
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San Diego, CA 92103  
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305-437-7662 (fax)  
[mjr@randazza.com](mailto:mjr@randazza.com)